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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,679	02/03/2004	Judith Reichenbach	3896-040076 (P-5974)	4034
32182 7590 01/24/2008 DAVID W. HIGHET, VP AND CHIEF IP COUNSEL BECTON DICKINSON AND COMPANY [THE WEBB LAW FIRM] FRANKLIN LAKES, NJ 07414-1880			EXAMINER OMGBA, ESSAMA	
			ART UNIT 3726	PAPER NUMBER
			MAIL DATE 01/24/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/771,679

Applicant(s)

REICHENBACH ET AL.

Examiner

Essama Omgba

Art Unit

3726

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29, 31-35 and 37-49 is/are pending in the application.
- 4a) Of the above claim(s) 1-25 and 37-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-30, 32 and 49 is/are rejected.
- 7) ☒ Claim(s) 33-35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 1-25 and 37-49 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 9, 2007.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 26-29, 31, 32 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Morony et al. (US Patent 4,771,911).

With regards to claims 26 and 49, Morony et al. discloses a method of assembling a container comprising an inner tube 13 contained within an outer tube 12, wherein the outer tube includes a closed bottom, an open top and a side wall extending therebetween, the side wall defining an inner surface and an outer surface, the inner surface having a recess below the open top thereof, the inner tube including a closed bottom, an open top and a side wall having an inner surface and an outer surface extending therebetween, the side wall of the inner tube being shorter than the side wall of the outer tube and including an outwardly flared portion 17 adjacent the open top of the inner tube, wherein the inner tube is inserted within the open top of the outer tube to a position in which the outwardly flared portion of the inner tube extends below a top

edge of the recess of the inner surface of the outer tube, and wherein contact of the outwardly flared portion within the recess sealingly supports the inner tube within the outer tube, see column 2, lines 31-52 and figure 1.

For claim 27, Applicant should note that it is inherent that any air trapped between the inner and outer tube of Morony et al. Will pass through the recess and vent in the atmospheric pressure.

For claim 28, the flared portion of inner tube 13 will contact the top edge of the recess when inserting the inner tube in the outer tube.

For claim 29, the recess of the outer tube extends circumferentially around the inner surface of the outer tube.

For claim 31, see figure 1.

For claim 32, see column 2, lines 46-52. Since there is an interference fit where flange 17 abuts against conical shoulder 18, it is inherent that flange 17 is deformed when inner tube 13 is inserted in outer tube 12.

Allowable Subject Matter

4. Claims 33-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments filed November 9, 2007 have been fully considered but they are not persuasive.

In response to Applicant's argument that the Morony reference does not disclose a recess below the open top of the outer tube, the examiner respectfully disagrees. As can be seen from figure 2 of the Morony reference, the recess is in fact located below the open top of the outer tube. The fact that the recess in the Morony reference extends through the open top portion does not negate that fact.

In response to Applicant's argument that the outwardly flared portion can engage the top edge of the recess to secure the inner tube within the outer tube, it is noted that the features upon which applicant relies (i.e., the outwardly flared portion engaging the top edge of the recess to secure the inner tube within the outer tube) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Essama Omgba whose telephone number is (571) 272-4532. The examiner can normally be reached on M-F 9-6:30, 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on (571) 272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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A handwritten signature in black ink, appearing to read 'Essama Omgba', written over the printed name.

Essama Omgba
Primary Examiner
Art Unit 3726

eo
January 20, 2008